# PUBLICATION

## New Servicing Guidelines Going Into Effect January 10, 2014

**Authors: Dylan W. Howard**
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The new Consumer Financial Protection Bureau (CFPB) servicing rules effective January 10, 2014 will change the legal landscape for mortgage servicers tremendously. Servicers now have very little time to accommodate the new rules.

These changes begin with the early intervention rules put in place by the CFPB. As of January 10, 2013, when a borrower defaults, a servicer must make a good faith effort to establish contact with the borrower by 36th day of their delinquency. If the borrower's default continues after the attempted contact, the contact must be made for each delinquent payment, though written notice of the delinquency is required once every 180 days. Next, the servicer must provide the delinquent borrower with written notice specifying the available loss mitigation options, if available, by the 45th day of delinquency. There is an exemption in these rules for small servicers, for borrowers in bankruptcy, and for debt collectors where a borrower has exercised his right to demand that communications cease.

The next set of rule changes involve what the CFPB terms "continuity of contact." For all delinquent borrowers, the loan servicer must maintain reasonable policies to provide delinquent borrowers with access to personnel to assist with their loss mitigation efforts. Servicers must assign specific personnel to the delinquent borrower by the time the servicer provides written notice of loss mitigation options. The specified personnel should be accessible to the borrower by phone and should be able to advise the borrower on the status of any loss mitigation application, access all of the information provided by the borrower, and provide that information to those responsible for evaluating the borrower for loss mitigation options. Small servicers are exempt from these rules. Fortunately, the CFPB has stated that it will supervise servicers for compliance with the "continuity of contact" rules and that borrowers will not maintain a private right of action arising from the violation of these rules.

There also are substantial changes to the rules that govern a servicer's review of a borrower for loss mitigation options. Basically, if a borrower submits a loss mitigation application more than 45 days prior to foreclosure, the servicer must acknowledge receipt of the application in writing within five days, and must either tell the borrower that the application is complete or, if it is incomplete, must tell the borrower what information is needed to complete it. If additional information or documentation is necessary, the servicer must provide the borrower with a reasonable date by which the missing information should be submitted. The CFPB has declared that it would be impractical for a borrower to obtain and submit financial documentation in less than seven days.

Then, if a complete loss mitigation application is received more than 37 days before a foreclosure sale, the servicer must evaluate the borrower within 30 days for all loss mitigation options available under investors' eligibility rules, including retention and non-retention options.

The servicer must then provide a written decision including explanations for any denial.

If, on the other hand, loss mitigation is granted, the notice must specify the time and procedures for the borrower to accept or reject the servicer's offer. If the borrower does not respond within the appropriate time, the servicer may deem the borrower to have rejected the loss mitigation offer. If the borrower does not accept the offer formally but instead begins making payments in accordance with the offer by the deadline, the servicer must give the borrower a reasonable opportunity to complete the documentation necessary.

Next, the borrower may appeal the decision so long as the completed loss mitigation application is received 90 days or more before foreclosure sale. If the borrower is eligible to appeal, the denial notice must give the deadline for appealing and describe any requirements for making the appeal.

Finally, the CFPB rules bar dual tracking. If a complete loan application is submitted before the servicer has made the first notice or filing required for foreclosure, the servicer may not initiate foreclosure until: (a) it informs the borrower that the borrower is not eligible for loss mitigation options and any appeal has been exhausted; (b) the borrower rejects all loss mitigation offers, or (c) the borrower fails to comply with the terms of the loss mitigation option that was offered.

If the borrower submits a complete application after the foreclosure process commenced, but more than 37 days before sale, the servicer may not move for foreclosure judgment or conduct a sale until one of the same three conditions has been satisfied. While small servicers are exempted from these rules, please be aware that borrowers will have a private right of action.